***THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY**

+ WRIT PETITION **NO : 11562 of 2005**

% 12-12-2005

ECE INDUSTRIES … PETITIONER

VS.

$ THE DISTRICT COLLECTOR,

VISAKHAPATNAM AND

ANOTHER … RESPONDENTS

! Counsel for the Petitioners: Mr.S.Srinivas Reddy

^ Counsel for the Respondent No.1&2 : G.P. for L.A.

Counsel for the Respondent No.3-7 : Mr.P.Venugopal

< Gist:

> Head Note:

? CITATIONS:

1. AIR 2004 SC 3582
2. (2005) 9 SCC 164
3. (1995) SUPP(1)SCC 596
4. AIR 1973 SC 1150
5. AIR 2003 SC 3140

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.11562 OF 2005

DISPOSED OF ON 12-12-2005

BETWEEN:

ECE INDUSTRIES … PETITIONER

AND

THE DISTRICT COLLECTOR,

VISAKHAPATNAM AND

ANOTHER … RESPONDENTS

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.11562 OF 2005

O R D E R :

1. This Writ Petition has been filed by ECE Industries (formerly known as Electric Construction and Equipment company Limited) represented by its GPA holder Mr.S.C.Agarwal with a prayer to issue a Writ of Mandamus declaring the action of respondents in proposing to acquire the lands, buildings, godowns etc. to an extent of Ac.23.18 cents comprising Sy.Nos.57-3&4, 58-1, 59-1,2 & 3 and 66-1A, 1B, 2, 3 & 4 of Marripalem village, S.Nos.1/3, 41-1, 2 & 4 and 42-4 of Kapparada village, Visakhapatnam for expansion of Visakhapatnam Industrial Estate.

2. The case of the petitioner-company, in brief, is:

The petitioner is a company registered under the Companies Act. It deals in manufacture and distribution of transformers and motors. The said products are manufactured in the units set up by the petitioner-company at various places in the country. The petitioner-company has one such unit at Visakhapatnam for the purpose of manufacturing the above said products. The unit at Visakhapatnam was established in the year 1962. For the purpose of construction of factory, quarters for the staff, godowns, guesthouses etc. the petitioner-company purchased the said lands. Though the lands are situated in two villages they are contiguous lands and the petitioner-company constructed a compound wall and at places where compound wall cannot be constructed erected barbed fencing all around the lands. After establishing the unit in 1962 the petitioner-company could run it till 1968 and

thereafter it came to be closed due to labour problem. In 1972 production re-commenced and thereafter came to be stopped in the year 1996. The petitioner-company has invested Rs.4.00 to Rs.5.00 crores for the construction of factory etc. The petitioner is also planning to upgrade the technology and modernize the unit. While so on 12.5.2005 two notices in Form 5-A under Land Acquisition Act bearing Rc.No.1882/2005/G2, dated 6.5.2005 were affixed on the compound wall of the unit of the petitioner-company at Visakhapatnam. Details of structures raised on the said lands are not given correctly in the said notices. The petitioner company was not aware as to the publication of the notification u/s 4 and declaration u/s 6 of L.A. Act. The lands belonging to the petitioner-company were sought to be acquired for the purpose of expansion of Visakhapatnam Industrial Estate. There is no reason for the respondents to acquire lands where industrial units exist. The same is nothing but colourable exercise of power. The action of respondents is highly arbitrary, illegal and unjust.

3. Respondents 1 and 2 have filed counter affidavit. It is stated in the counter affidavit that APIIC, Visakhapatnam has submitted a requisition vide its letter dated 15.5.2005 to the District Collector, Visakhapatnam for acquisition of lands admeasuring Ac.23-43 cents comprising S.Nos.57/3, 4, 5, 58/1, 59/2, 3, 66/1,2,3,4 of Marripalem village and S.Nos.1/3, 41/1, 2, 4 and 42/4 of Kapparada village of Visakhapatnam (North) Mandal for the purpose of expansion of industrial estate. Thereupon the District Collector, Visakhapatnam has issued orders vide Rc.No.1882/ 2005/G2, dated 16.4.2005 authorizing the Revenue Divisional Officer, Visakhapatnam, to acquire the above said lands under the L.A.Act and to handover them to the requisitioning department. The lands in question have been declared as surplus lands under ULC Act. As there is variation in the extent declared as surplus land, a letter has been addressed to Special officer and Competent Authority, ULC, Hyderabad to issue revised orders and the same are awaited and therefore, declaration (notification) u/s 10(3) of ULC Act could not be published in A.P. Gazette. On verification of the lands proposed for acquisition with the list of lands declared as surplus as reported by the Special officer, Urban land Ceiling, except the lands in S.Nos.66/3 and 66/4 situated at Marripalem village, all other lands proposed for acquisition are listed out as surplus lands. Notifications u/s 4(1) of the Act in respect of the lands in question were approved by the District Collector, Visakhapatnam on 21.4.2005. Proposals along with draft declaration u/s 6 of L.A. Act were submitted to the Collector on 27.4.2005. The District Collector has

approved the draft declaration u/s 6 of the Act. The Government informed the Collector that some of the lands proposed to be acquired have already been declared as surplus lands under ULC Act and an appeal is pending before the appellate authority i.e. Commissioner of Appeals, Hyderabad. I deem it appropriate to refer relevant portion of the counter affidavit, which is as under:

> " 3…….In this regard, the Government informed the Collector that a part of the land held at Visakhapatnam has already been declared surplus under the ULC Act and an appeal is pending before the appellate authority i.e., Commissioner Appeals, O/o the Chief Commissioner of Land Administration, Hyderabad. Therefore, taking possession of the land under Land Acquisition Act may be deferred. If possession is taken under L.A. Act earlier to vesting of land in Government u/s 10(3) of the ULC Act, their compensation on par with market value even for the land declared surplus will have to be paid, under L.A. Act alone, as decided by the Division Bench of High Court of A.P., in a similar case of Hyderabad in CCLA No.196/2001. The Government further informed that the Special Officer and Competent Authority, ULC, Visakhapatnam who was there at Hyderabad recently has also been told of the above implications and directed to bring it to the notice of Collector, Visakhapatnam and Revenue Divisional Officer and Land Acquisition Officer concerned also. As the matter stood thus, the petitioner herein has filed the present petition.
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> 4. In reply to the averments made in para 2 of the petitioner's affidavit, it is submitted that the zonal Manager, APIIC, Visakhapatnam has filed a requisition before the Collector for acquisition of lands measuring Ac.15-95 cents in S.Nos.57/3, 4,5, 58/1, 59/2, 3, 66/1, 2, 3 4 of Marripalem village and land measuring Ac.7.42 cents in S.Nos.1/3, 41/1, 2, 4 and 42/4 of Kapparada village of Visakhapatnam (North) Mandal for the purpose of expansion of Industrial Estate. The L.A. proceedings have been initiated to acquire the above said lands for the purpose of expansion of Industrial Estate through APICC as the petitioner's unit defunct and no production work is being carried out in the said unit. Hence, the said land is required for the purpose of expansion of industries such as software and I.T. industries. Hence, it is not correct to say that the petitioner is using the said land for industrial purpose as no production is going on in the industry."

It is further stated that the urgency provisions under section 17(4) of the L.A.Act were invoked and thereby enquiry u/s 5A of the L.A.Act was dispensed with.

4. Respondents 3 to 7 came on record as per orders of this court in WPMP.No.17387 of 2005 dated 1.7.2005. They are the owners of the land admeasuring Ac.3.52 cents in S.No.59/3. The said land came to be leased to writ petitioner for a period of 99 years under registered lease deed No.1138 of 1964 dated 22.4.1964. A civil suit being O.S.516 of 2005 on the file of II Senior Civil Judge, Visakhapatnam came to be filed by them against the petitioner company for eviction and the said suit is pending trial. An Advocate Commissioner came to be appointed to know the present condition of the unit of the petitioner. According to them, the petitioner company is only a tenant of the land in question and therefore the petitioner company cannot question the acquisition proceedings and that the unit of the petitioner-company unit at Visakhapatnam became defunct.

5. Heard learned counsel appearing for the petitioner company, learned Government Pleader for Land Acquisition appearing for respondents 1 and 2 and learned counsel appearing for the respondents 3 to 7.

6. Learned counsel appearing for the petitioner company submits that the petitioner unit being an industrial unit, the lands in its possession cannot be acquired for the purpose of expansion of Visakhapatnam Industrial Estate. He further submits that invocation of urgency clause u/s 17(4) of L.A. Act is not based on sound reasons and therefore dispensing with the enquiry u/s 5A of the Act is to be declared as bad. A further submission has been made that when possession has not been taken and the Government is not inclined to take possession pending disposal of the appeal filed by the petitioner company before the appellate authority, there is no useful purpose in dispensing with the enquiry u/s 5A of the Act. In support of his submissions reliance has been placed on a decision of Supreme Court in UNION OF INDIA V. KRISHAN LAL ARNEJA wherein it has been held as follows:

> " SECTION 17 confers extraordinary powers on the authorities under which it. can dispense with the normal procedure laid down under

section 5A of the Act in exceptional case of urgency. Such powers cannot be lightly resorted to except in case of real urgency enabling the government to take immediate possession of the land proposed to be acquired for public purpose. A public purpose, however, laudable it may be, by itself is not sufficient to take aid of section 17 to use this extraordinary power as use of such power deprives a land owner of his right in relation to immoveable property to file objections for the proposed acquisition and it also dispenses with the inquiry under section 5A of the Act. The authority must have subjective satisfaction of the need for invoking urgency clause under section 17 keeping in mind the nature of the public purpose, real urgency that the situation demands and the time factor i.e. whether taking possession of the property can wait for a minimum period within which the objections could be received from the land owners and the inquiry under section 5A of the Act could be completed. In other words, if power under section 17 is not exercised, the very purpose for which the land is being acquired urgently would be frustrated or defeated. Normally urgency to acquire a land for public purpose does not arise suddenly or overnight but sometimes such urgency may arise unexpectedly, exceptionally or extraordinarily depending on situations such as due to earthquake, flood or some specific time-bound project where the delay is likely to render the purpose nugatory or infructuous. A citizen's property can be acquired in accordance with law but in the absence of real and genuine urgency, it may not be appropriate to deprive an aggrieved party of a fair and just opportunity of putting forth its objections for due consideration of the acquiring authority. While applying the urgency clause, the State should indeed act with due care and responsibility. Invoking urgency clause cannot be a substitute or support for the laxity, lethargy or lack of care on the part of the State administration."

7. The principal contention of learned counsel appearing for the petitioner is that when the industrial units are existing in the lands covered under section 4(1) notification, the said lands need not be acquired for expansion of Vishakhapatnam Industrial Estate. It has come on record that the unit of the petitioner company has closed its unit at Visakhapatnam in the year 1996. Though the unit commenced in the year 1962 it ran intermittently and came to be closed once for all in the year 1996. The expression "public purpose" includes the provision of planned development of an industrial estate. A question came up for consideration in PEDDI ANJAIAH AND OTHERS V. LAO, RDO, KARIMNAGAR whether the expression "public purpose" includes the provision of planned development of land from public funds in pursuance of any scheme or policy of the Government. Para 10 of the

judgment reads as under:

> " The learned counsel for the appellant disputed the public purpose in the present case. The expression 'public purpose' includes the provision of planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or part by lease, assignment or outright sale with the object of securing further development as planned. As already seen in the instant case, the land was sought to be acquired for the planned development, which, in our opinion, is a "public purpose". The proceedings were initiated by the District Collector who is the competent authority to initiate Land Acquisition proceedings. It is also seen from the records that all the land owners have claimed compensation at the rate of Rs.5,000/- per gunta and that the owners of the major extent of Ac.15-23 guntas have consented to part with their lands and that the petitioners' land alone in an extent Ac.1-37 guntas which is adjacent to the major extent of the land could not be secured because of the pendency of the Writ Petition."

The Supreme Court in ANAND BUTTONS LTD. V. STATE OF HARYANA AND OTHERS has held that the authority which has to carry out planned development of industrial estate is in best position to judge as to which land can be exempted from acquisition without jeopardizing development scheme. In view of the settled position of law, I do not see any substance in the contention of learned counsel appearing for the petitioner.

8. It is not in dispute that Sec.5 of the Act confers a valuable right in favour of a person whose lands are sought to be acquired. Having regard to the provisions contained in Art.300A of the Constitution of India, the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the land but the same must be for a public purpose and reasonable compensation thereof must be paid. Indisputably the definition of public purpose is of wide amplitude and takes within its sweep the acquisition of land for a Corporation owned or controlled by the State as envisaged under sub-clause (iv) of Clause (f) of Sec.3 of the Act. But the same would not mean that the State is the sole Judge and therefore no judicial review shall lie vide the decision of Supreme Court in JILUBHAI NANBHAI KHACHAR AND OTHERS V. STATE OF GUJARAT AND ANOTHER. It is relevant to know that the limited right given to a owner interested under Sec.5A of the Act to object to the acquisition proceedings is not an empty formality and is a substantive right, which can be taken away for good and valid reason and within the

limitations prescribed under Section 17(4) of the Act. The object and importance of Section 5-A inquiry was noticed by Supreme Court in the case of MUNSHI SINGH V. UNION OF INDIA wherein it has been held that

> " 7. Section 5-A embodies a very just and wholesome principle that a person whose property is being or is intended to be acquired should have a proper and reasonable opportunity of persuading the authorities concerned that acquisition of the property belonging to that person should not be made….The legislature has, therefore, made complete provisions for the persons interested to file objections against the proposed acquisition and for the disposal of their objections. It is only in cases of urgency that special powers have been conferred on the appropriate Government to dispense with the provisions of Section 5-A."

Such an opportunity of being heard is necessary to be granted with a view to show that the purpose for which the acquisition proceeding is sought to be made is not a public purpose as also the suitability of land therefor. Section 5-A is in two parts. Upon receipt of objections, the Collector is required to make such further enquiry as he may think necessary where upon he must submit a report to the appropriate Government in respect of the land which is the subject matter of notification under section 4(1) of the Act. The said report would also contain recommendations on the objections filed by the owner of the land. He is required to forward the records of the proceedings held by him together with the report. On receipt of such a report together with the record of cases, the Government is to render a decision thereupon.

9. Learned counsel appearing for the petitioner submits that the petitioner itself is an industry and therefore acquisition of its lands for expansion of industrial development is not warranted. Indisputably the acquisition of the lands is for expansion of Visakhapatnam Industrial Estate. The establishment of the petitioner became defunct and disused. There would be no useful purpose in allowing the petitioner to retain the lands which forms part and parcel of the industrial development plan conceived by the State Government. Therefore, the contention of the counsel that when the petitioner-company had already established the industrial unit acquisition of lands for expansion of Visakhapatnam Industrial Estate has no substance.

10. In PRATIBHA NEMA AND OTHERS V. STATE OF M.P.AND OTHERS the Apex Court while considering the scope of public purpose mentioned in the L.A.Act observed that satisfaction of the Government as to the existence of public purpose cannot be lightly faulted. All that Sec.4 (1) requires is that the notification should mention that the lands in the locality should be acquired. Sec.4(1) requires that the notification should be published in the gazettee also in the locality in order to give information to all persons having any interest in the lands that were proposed to be acquired for a public purpose. The object of issuing a notification under S.4 of the Act is twofold. First, it is a public announcement by the government and a public notice by the Collector to the effect that the land, as specified there in, is needed or is likely to be needed by the government for the "public purpose" mentioned there in; and secondly, it authorizes the departmental officers or officers of the local authority, as the case may be, to do all such acts as are mentioned in S. 4(2) of the Act. The notification has to be published in the locality and particularly persons likely to be affected by the proposal have to be put on notice that such an activity is afoot. The notification is, thus, required to give with sufficient clarity not only the "public purpose" for which the acquisition proceedings are being commenced but also the "locality" where the land is situated with as full a description as possible of the land proposed to be acquired to enable the "interested" persons to know as to which land is being acquired and for what purpose and to take further steps under the Act by filing objections etc., since it is open to such persons to canvass the non-suitability of the land for the alleged "public purpose" also. If a notification under S. 4(1) of the Act is defective and does not comply with the requirements of the Act, it not only vitiates the notification, but also renders all subsequent proceedings connected with the acquisition, bad.

11. The material placed on record established that notifications under Sec.4(1) of L.A.Act have been published in all the three forms i.e. publication in A.P. Gazette, paper publication and local publication as provided under the provisions of the L.A.Act. Hence, I find that Sec.4(1) notification proposing acquisition of lands in question for public purpose are valid.

12. Learned counsel appearing for the petitioner submits that since the Government is not inclined to take possession of the lands covered under section 4(1) notification inspite of Sec.5A enquiry being dispensed with pending the proceedings before the appellate authority i.e. Commissioner of Appeals, there is no useful purpose in invoking emergency clause and in which case enquiry u/s 5A is required to be proceeded. It is not in dispute that the government is not inclined to take possession of the lands covered under section 4(1) notification pending disposal of the appeal before the appellate authority i.e. Commissioner of Appeals. I deem it appropriate to refer para 3 of the counter affidavit filed by the official respondents and it is thus:

" 3…….Proposals along with draft declaration u/s 6 of L.A.Act were submitted to the Collector vide this office reference dated 27.4.2005 and the District Collector has approved D.D. u/s 6 of the L.A.Act and they were also published in the District Gazette, local newspapers and in the locality as per the procedure laid down in the L.A.Act. Now the proposals are at P.V.stage. In the meanwhile the Government in Revenue (UC.III) Department have informed in their Memo.No.26929/UC.II(1)/97 Revenue (UC.III) Department dated 9.5.2005 that as seen from the proceedings, the APIIC Limited placed requisition for acquisition of lands held by APEEC at Visakhapatnam and the Collector ordered for initiating action by the Revenue Divisional Officer. In this regard, the government informed the Collector that a part of the land held at Visakhapatnam has already been declared surplus under the ULC Act and an appeal is pending before the appellate authority i.e., Commissioner of Appeals, O/o the Chief Commissioner of Land Administration, Hyderabad. Therefore, taking possession of the land under Land Acquisition Act may be deferred. If possession is taken under L.A.Act earlier to vesting of land in Government u/s 10(3) of ULC Act, their compensation on par with market value even for the land declared surplus will have to be paid, under L.A.Act alone, as decided by the Division Bench of High Court of A.P, in a similar case of Hyderabad CCLA.No.196/2001. The Government further informed that the Special Officer and Competent authority, ULC, Visakhapatnam who was there at Hyderabad recently has also been told of the above implications and directed to bring it to the notice of Collector, Visakhapatnam and RDO and LAO concerned also. As the matter stood thus, the petitioner herein has filed the present petition."

A plain reading of the above para of the counter affidavit of the respondents 1 and 2 indicates that the Government is not inclined to take possession of the property covered u/s 4(1) notifications pending proceedings before the appellate authority i.e. Commissioner of Appeals, Hyderabad. In that view of the matter there is no purpose

in invoking the urgency clause and dispensing with enquiry under section 5A of L.A. Act.

13. Accordingly, this writ petition is partly allowed setting aside the declarations u/s 6 of L.A.Act and directing respondents 1 and 2 to conduct enquiry u/s 5A of L.A.Act. It goes without saying that the petitioner-company is at liberty to file its objections within 30 days from today and further proceedings are required to be taken in accordance with the provisions of L.A.Act. No costs.

Dt: 12-12-2005. (B.Seshasayana Reddy,J)

tnb

issue cc in three days.

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THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.11562 OF 2005

DISPOSED OF ON 12-12-2005